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HOUSE BILL 2754

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State of Washington                      60th Legislature                      2008 Regular Session

By Representatives Pettigrew, Ericks, and Santos

Read first time 01/16/08. Referred to Committee on Housing.

1            AN ACT Relating to exempting certain housing developers from the  
2 real estate excise tax requirement; amending RCW 82.45.010; and adding  
3 a new section to chapter 82.45 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            NEW SECTION.    **Sec. 1.** A new section is added to chapter 82.45 RCW  
6 to read as follows:

7            The legislature finds that there is a large, unmet need for  
8 affordable housing in the state of Washington. The legislature also  
9 finds that providing targeted incentives to housing developers will  
10 encourage the production and sale of homes affordable to low and  
11 moderate-income households. The legislature intends to provide such  
12 incentives through excise tax relief on sales of homes to low and  
13 moderate-income first-time homebuyers.

14            **Sec. 2.** RCW 82.45.010 and 2000 2nd sp.s. c 4 s 26 are each amended  
15 to read as follows:

16            (1) As used in this chapter, the term "sale" shall have its  
17 ordinary meaning and shall include any conveyance, grant, assignment,  
18 quitclaim, or transfer of the ownership of or title to real property,

1 including standing timber, or any estate or interest therein for a  
2 valuable consideration, and any contract for such conveyance, grant,  
3 assignment, quitclaim, or transfer, and any lease with an option to  
4 purchase real property, including standing timber, or any estate or  
5 interest therein or other contract under which possession of the  
6 property is given to the purchaser, or any other person at the  
7 purchaser's direction, and title to the property is retained by the  
8 vendor as security for the payment of the purchase price. The term  
9 also includes the grant, assignment, quitclaim, sale, or transfer of  
10 improvements constructed upon leased land.

11 (2) The term "sale" also includes the transfer or acquisition  
12 within any twelve-month period of a controlling interest in any entity  
13 with an interest in real property located in this state for a valuable  
14 consideration. For purposes of this subsection, all acquisitions of  
15 persons acting in concert shall be aggregated for purposes of  
16 determining whether a transfer or acquisition of a controlling interest  
17 has taken place. The department of revenue shall adopt standards by  
18 rule to determine when persons are acting in concert. In adopting a  
19 rule for this purpose, the department shall consider the following:

20 (a) Persons shall be treated as acting in concert when they have a  
21 relationship with each other such that one person influences or  
22 controls the actions of another through common ownership; and

23 (b) When persons are not commonly owned or controlled, they shall  
24 be treated as acting in concert only when the unity with which the  
25 purchasers have negotiated and will consummate the transfer of  
26 ownership interests supports a finding that they are acting as a single  
27 entity. If the acquisitions are completely independent, with each  
28 purchaser buying without regard to the identity of the other  
29 purchasers, then the acquisitions shall be considered separate  
30 acquisitions.

31 (3) The term "sale" shall not include:

32 (a) A transfer by gift, devise, or inheritance.

33 (b) A transfer of any leasehold interest other than of the type  
34 mentioned above.

35 (c) A cancellation or forfeiture of a vendee's interest in a  
36 contract for the sale of real property, whether or not such contract  
37 contains a forfeiture clause, or deed in lieu of foreclosure of a  
38 mortgage.

1 (d) The partition of property by tenants in common by agreement or  
2 as the result of a court decree.

3 (e) The assignment of property or interest in property from one  
4 spouse to the other in accordance with the terms of a decree of divorce  
5 or in fulfillment of a property settlement agreement.

6 (f) The assignment or other transfer of a vendor's interest in a  
7 contract for the sale of real property, even though accompanied by a  
8 conveyance of the vendor's interest in the real property involved.

9 (g) Transfers by appropriation or decree in condemnation  
10 proceedings brought by the United States, the state or any political  
11 subdivision thereof, or a municipal corporation.

12 (h) A mortgage or other transfer of an interest in real property  
13 merely to secure a debt, or the assignment thereof.

14 (i) Any transfer or conveyance made pursuant to a deed of trust or  
15 an order of sale by the court in any mortgage, deed of trust, or lien  
16 foreclosure proceeding or upon execution of a judgment, or deed in lieu  
17 of foreclosure to satisfy a mortgage or deed of trust.

18 (j) A conveyance to the federal housing administration or veterans  
19 administration by an authorized mortgagee made pursuant to a contract  
20 of insurance or guaranty with the federal housing administration or  
21 veterans administration.

22 (k) A transfer in compliance with the terms of any lease or  
23 contract upon which the tax as imposed by this chapter has been paid or  
24 where the lease or contract was entered into prior to the date this tax  
25 was first imposed.

26 (l) The sale of any grave or lot in an established cemetery.

27 (m) A sale by the United States, this state or any political  
28 subdivision thereof, or a municipal corporation of this state.

29 (n) A sale by a housing developer of a residential housing unit  
30 that is new construction or that has been substantially rehabilitated  
31 to a low or moderate-income first-time homebuyer household. For the  
32 purpose of this subsection (3)(n):

33 (i) "Housing developer" means any individual, firm, copartnership,  
34 joint venture, club, company, joint stock company, business trust,  
35 municipal corporation, political subdivision of the state of  
36 Washington, corporation, limited liability company, association,  
37 society, or any group of individuals acting as a unit, whether mutual,  
38 cooperative, fraternal, nonprofit, or otherwise that has, among its

1 primary purposes, significant activities related to the provision of  
2 decent housing that is affordable to low or moderate-income households  
3 or both;

4 (ii) "Low or moderate-income first-time homebuyer household" means  
5 a single person, family, or unrelated persons living together whose  
6 adjusted income is at or below one hundred twenty percent of the median  
7 family income adjusted for family size, for the county where the  
8 project is located, as reported by the United States department of  
9 housing and urban development, when one of the legal homebuyers has not  
10 owned and occupied a primary residence at any time in the three years  
11 preceding the closing of the mortgage loan; and

12 (iii) "Substantially rehabilitated" means that the housing  
13 developer has expended on repairs, replacements, and improvements over  
14 fifteen percent of the unit's value after completion of all repairs,  
15 replacements, and improvements.

16 (o) A sale to a regional transit authority or public corporation  
17 under RCW 81.112.320 under a sale/leaseback agreement under RCW  
18 81.112.300.

19 ~~((+o+))~~ (p) A transfer of real property, however effected, if it  
20 consists of a mere change in identity or form of ownership of an entity  
21 where there is no change in the beneficial ownership. These include  
22 transfers to a corporation or partnership which is wholly owned by the  
23 transferor and/or the transferor's spouse or children: PROVIDED, That  
24 if thereafter such transferee corporation or partnership voluntarily  
25 transfers such real property, or such transferor, spouse, or children  
26 voluntarily transfer stock in the transferee corporation or interest in  
27 the transferee partnership capital, as the case may be, to other than  
28 ~~((+1+))~~ (i) the transferor and/or the transferor's spouse or children,  
29 ~~((+2+))~~ (ii) a trust having the transferor and/or the transferor's  
30 spouse or children as the only beneficiaries at the time of the  
31 transfer to the trust, or ~~((+3+))~~ (iii) a corporation or partnership  
32 wholly owned by the original transferor and/or the transferor's spouse  
33 or children, within three years of the original transfer to which this  
34 exemption applies, and the tax on the subsequent transfer has not been  
35 paid within sixty days of becoming due, excise taxes shall become due  
36 and payable on the original transfer as otherwise provided by law.

37 ~~((+p+))~~ (q)(i) A transfer that for federal income tax purposes does  
38 not involve the recognition of gain or loss for entity formation,

1 liquidation or dissolution, and reorganization, including but not  
2 limited to nonrecognition of gain or loss because of application of  
3 section 332, 337, 351, 368(a)(1), 721, or 731 of the Internal Revenue  
4 Code of 1986, as amended.

5 (ii) However, the transfer described in (~~(p)~~) (q)(i) of this  
6 subsection cannot be preceded or followed within a twelve-month period  
7 by another transfer or series of transfers, that, when combined with  
8 the otherwise exempt transfer or transfers described in (~~(p)~~) (q)(i)  
9 of this subsection, results in the transfer of a controlling interest  
10 in the entity for valuable consideration, and in which one or more  
11 persons previously holding a controlling interest in the entity receive  
12 cash or property in exchange for any interest the person or persons  
13 acting in concert hold in the entity. This subsection (3)(~~(p)~~)  
14 (q)(ii) does not apply to that part of the transfer involving property  
15 received that is the real property interest that the person or persons  
16 originally contributed to the entity or when one or more persons who  
17 did not contribute real property or belong to the entity at a time when  
18 real property was purchased receive cash or personal property in  
19 exchange for that person or persons' interest in the entity. The real  
20 estate excise tax under this subsection (3)(~~(p)~~) (q)(ii) is imposed  
21 upon the person or persons who previously held a controlling interest  
22 in the entity.

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